IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA SOUTHERN DIVISION

No. 7:08-CV-191-H

C. JOHNSON SHEFFIELD CPA, PC; C. JOHNSON SHEFFIELD and wife, EMILY F. SHEFFIELD D/B/A PAPE ENTERPRISE,))))
Plaintiffs,)
V.) <u>MEMORANDUM AND</u>) <u>RECOMMENDATION</u>
OHIO CASUALTY GROUP,	,)
	ý
Defendant.	,)

This matter is before the Court on Defendant's Motion to Dismiss [DE-9] and Plaintiffs' response [DE-13], which were referred to the undersigned for a Memorandum and Recommendation. As an initial matter, both Defendant and Plaintiff failed to comply with Local Rule 7.1(d) & (e), respectively, by not filing supporting memoranda. Furthermore, this Court, on March 9, 2009, entered a Consent Order granting Plaintiffs leave to amend their Complaint [DE-20], which appears to moot Defendant's Motion to Dismiss the initial complaint. Accordingly, the Court **RECOMMENDS** that Defendant's Motion to Dismiss [DE-9] be **DENIED**.

The Clerk shall send copies of this Memorandum and Recommendation to counsel for the respective parties, who have ten (10) days from the date of receipt to file written objections. Failure to file timely written objections shall bar an aggrieved party from receiving a *de novo* review by the District Court on an issue covered in the Memorandum and, except upon grounds of plain error, from attacking on appeal the proposed factual

findings and legal conclusions not objected to, and accepted by, the District Court.

This 117 day of March, 2009.

DAVID W. DANIEL

United States Magistrate Judge